

Remarks

Claims 11, 13, 14, 16, 20, 22 and 24 have been amended to more clearly define the invention. Basis for the amendments can be found in the specification on page 2 lines 22-25, page 3 lines 23-26, page 8 lines 3-9 and item 44 in Figure 2.

The Examiner's comments in section 1 of the Office Action relating to the abstract have been addressed by the new abstract set out on a separate page above.

In section 1 of the Office Action the Examiner rejects independent claim 11 under 35 USC §102(e) as being anticipated by Gardner (US Patent No. 5,857,147). Reconsideration is again requested.

Gardner discloses a "method and apparatus for determining the transmission data rate in a multi-user communication system" (Gardner, title). The Examiner argues that Gardner discloses the ability to reduce the data rate if the amount of data traffic at the base station exceeds a pre-determined level and highlights Figure 5. Gardner however does not teach use of "a number of fixed bit rate channels for providing a fixed bandwidth voice service between said user station and said base station and a variable bit rate data channel" (this application, claim 11). Furthermore Gardner does not teach that "if available bandwidth falls below a pre-determined threshold the capacity management module is arranged to implement a reduced bit rate coding scheme for the variable bit rate data channel" (this application, claim 11). As shown clearly in Gardner Figures 5, 6, 7, 9 and 10, Gardner teaches that all messages or users are treated equally and that if usage falls above or below a threshold level the transmission rate of every message is modified in an identical manner. This is clearly distinct from the present invention as defined by the amended claim 11 where voice and data channels are treated differently in that voice services are transmitted at a fixed bandwidth whereas data channels may be subject to a reduced bit rate coding scheme when the amount of available bandwidth falls below a pre-

determined threshold. Consequently the present invention as defined by the amended claim 11 is clearly novel over Gardner.

The Examiner also cites Luddy (US Patent No. 5,953,346) which describes "a CDMA communication system" (Luddy, abstract). Luddy does teach to distinguish between voice traffic and data traffic but does not teach that "if available bandwidth falls below a pre-determined threshold the capacity management module is arranged to implement a reduced bit rate coding scheme for the variable bit rate data channel" (this application, claim 11). Instead Luddy teaches use of a low data rate for voice and a high data rate for data (Luddy, column 3, lines 61-65). In fact, Luddy teaches away from the present invention by teaching that on receipt of data the data rate of transmission is increased (Luddy, column 4, lines 26-40).

The Examiner also cites Hsu (US Patent No. 6,314,112) relating to a "method and apparatus for network transmission capacity enhancement" (Hsu, title). Like Luddy, Hsu also differentiates between voice and data calls. However, Hsu does not teach that "if available bandwidth falls below a pre-determined threshold the capacity management module is arranged to implement a reduced bit rate coding scheme for the variable bit rate data channel" (this application, claim 11). Instead Hsu teaches that the voice traffic can be compressed (Hsu, column 2, lines 33-38 and column 3, lines 59-65) which is teaching away from the present invention.

As Gardner, Luddy and Hsu fail to disclose either alone or in combination the feature that "if available bandwidth falls below a pre-determined threshold the capacity management module is arranged to implement a reduced bit rate coding scheme for the variable bit rate data channel". It is respectfully submitted that the amended claim 11 is therefore both novel and not obvious and the applicant respectfully submits that the Examiner's rejection cannot be sustained.

Independent claim 20 has been amended in a corresponding manner to claim 11 and the above arguments are equally applicable.

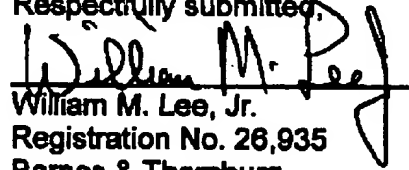
The Examiner also rejects dependent claims 12-19 and 21-28. As these are dependent on amended claims 11 and 20 which are now deemed allowable, it is respectfully submitted that these rejections are moot in light of the foregoing.

The applicant realizes that this response is being filed following a final rejection. It is submitted that this response ought to be entered and fully considered since, not only have no new issues been raised, but rather issues have been reduced since the applicant has responded to each of the concerns of the Examiner and, it is believed, satisfied them. In addition, this response ought to be entered because the prior art was cited against the claims of the application for the first time in the Examiner's Final Office Action of July 1, 2003 and this is therefore the first opportunity of the applicant to respond to the prior art and explain the patentable differences of the invention which distinguish the invention from the prior art.

In view of the fact that all of the Examiner's comments have been addressed, further and favorable consideration is respectfully submitted.

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Respectfully submitted,


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